



No. 75-1450

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1976

IOWA DEPARTMENT OF SOCIAL SERVICES, STATE OF  
IOWA,

Petitioner,

vs.

WEST HEIGHT MANOR, INC.,

Respondent,

KEVIN BURNS, COMMISSIONER OF STATE OF IOWA  
DEPARTMENT OF SOCIAL SERVICES, AND STATE OF  
IOWA DEPARTMENT OF SOCIAL SERVICES,

Petitioners,

vs.

HUTCHISON NURSING HOME, INC., NEW HAVEN REST  
HOME, INC., GRIFFIN NURSING CENTER,

Respondents.

IOWA'S REPLY TO  
BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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DISCUSSION

The Solicitor General, in writing the Amicus Brief for the Federal Government on pages four and five presents the forceful arguments why the nursing homes who have taken accelerated depreciation and then left the Medicare program

should reimburse the Federal Government for previously taken anticipated depreciation. This is the same argument it is making in its cases before the United States Court of Appeals in the various circuits and the same argument Iowa makes in its case here.

In its brief, the Government states that most of the Federal cases have involved an analogous problem with Iowa's in the Medicaid program. (Gov. Brief 6 fn 6). Actually, the issue is *identical* since Iowa adopted the Medicare provisions in its Medicaid program. (Pet. Brief App. H p. 28a).

Based upon the analysis of the Amicus on the merits of the case, it appears that such Amicus shares Petitioner's view that there is great likelihood of success of a reversal of this case (and the United States District Court cases) if the Writ is granted.

It is most surprising then, to read that the Federal Government recommends a denial of certiorari since it agrees with Iowa's position on the legal issue and even states "*accordingly we believe that the judgments of the Supreme Court of Iowa are incorrect.*" (Gov. Brief p. 4) In its recommendation of denial, the Government states that "as yet there is no conflict among the circuits on the merits of the question presented. At least in the absence of such a conflict, we cannot say that the question presented warrants review by this Court." (Gov. Brief p. 6)

"Conflict among the Circuits" was not listed by Petitioners as a reason for granting writ since those cases have not yet been decided on their merits. (Gov. Brief fn 6 p. 6) Thus, the Federal Government has failed to come to grips with the cogent arguments and persuasive reasons advanced by Iowa as the Reasons for Granting the Writ. (Pet. Brief p. 7). Most important, as a reason to grant the Writ, is the one that the Iowa

decision is in direct conflict with the previous holdings of this Court. (Citations Pet. Brief p. 7).

Contrary to the opinion of the Federal Government that Iowa's case "appears to have little prospective importance", Iowa points out that, even apart from the monetary aspect (thousands of dollars to be collected if ultimately successful and thousands of dollars saved from making refunds to any demanding nursing homes who already paid on an accelerated depreciation reimbursement settlement),<sup>1</sup> the case would stand as a precedent to permit any State to frustrate and impede any jointly sponsored State-Federal program which the state deemed unpopular *if local laws can override the Federal law which creates the program.*

And, the alternative suggestion made by the Government, that "this Court may wish to vacate the judgment below and remand to the Supreme Court of Iowa for reconsideration in the light of the principles set forth in the intervening decision in *Usery v. Turner Elkhorn Mining Co., Supra*"<sup>2</sup> would not bring a satisfactory solution since the Iowa Court believes that local law governs. It gave no consideration to the *Rasado*<sup>3</sup> decision, for example.

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<sup>1</sup> Two nursing homes have thus far made demand and await the final outcome of this litigation.

<sup>2</sup> Gov. Brief fn. 7 p. 6.

<sup>3</sup> *Rasado v. Wyman* (1970) 397 U.S. 397, 421.

**CONCLUSION**

Iowa then respectfully renews its request that this Court grant the Writ of Certiorari herein to review the judgments of the Iowa Supreme Court.

Respectfully submitted,

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October 4, 1976